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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-482

THE HON. ROBERT K. SMITH, JUDGE, *et al.*,
Petitioners,

—v.—

STATE *ex rel.* DAILY MAIL PUBLISHING CO., *et al.*,
Respondents.

THE HON. ROBERT K. SMITH, JUDGE, *et al.*,
Petitioners,

—v.—

DON MARSH, *et al.*, THE DAILY GAZETTE CO., *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE, AND BRIEF *AMICUS CURIAE*

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In The

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-v.-

DON MARSH, et al., THE DAILY GAZETTE CO., et al.,

Respondents.

On Writ of Certiorari to the Supreme Court of Appeals of West Virginia

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Motion of the American Civil Liberties Union For Leave To File Brief Amicus Curiae

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The American Civil Liberties Union respectfully moves, pursuant to Rule 42 of this Court's Rules, for leave to file the within brief amicus curiae. Although Respondents consented to the filing of a

brief amicus curiae by the Juvenile Defender Attorney Program urging reversal of the judgment below, Petitioners have refused to consent to the filing of this brief, which urges that the judgment below be affirmed. Respondents' consent has been filed.

The American Civil Liberties Union is a nationwide, non-partisan organization of over 200,000 members. The ACLU is dedicated solely to defending the principles of the Bill of Rights. Central among those principles is the First Amendment's freedom of the press, a prerequisite to the continued maintenance of a free society. Equally important is the citizen's right to be free from unwarranted intrusions on personal privacy. The parties to this case contend that these important constitutional principles are in irreconcilable conflict here.

In previous cases the ACLU has represented before this Court both sets of interests now contending for recognition. In numerous cases, the ACLU has argued that the press must be free to print whatever information it wishes without prior restraint or fear of subsequent criminal punishment. In other cases, it has supported the right to be free from unwarranted

intrusions on the right of privacy.

In this case, restrictions on the freedom of the press are sought to be justified in the name of protecting personal privacy. But restrictions on speech and expression are impermissible methods of achieving even laudable societal goals. Although it may be desirable to keep the names of juvenile offenders out of the public press, and although it may be permissible for the state to attempt to keep secret the names of juvenile offenders, it does not follow that the state may impose criminal sanctions on a newspaper or reporter for the act of publishing those names once they have been lawfully obtained. Our constitutional system -- which includes both freedom of the press and personal privacy -- is better served by the free flow of truthful, lawfully obtained information than by its suppression, even if the dissemination of that information sometimes impedes the full implementation of desirable social policies.

It is to present this analysis that amicus respectfully moves for leave to

file this brief.

Respectfully submitted,

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January 25, 1979

In The
SUPREME COURT OF THE UNITED STATES
October Term 1978

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THE HON. ROBERT K. SMITH, JUDGE, et al.,
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BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AMICUS CURIAE

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BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AMICUS CURIAE

INTEREST OF AMICUS

The interest of amicus appears in the foregoing motion.

STATEMENT OF THE CASE

The February 10, 1978 edition of respondent Charleston Daily Gazette reported that the previous morning a 15 year-old ninth-grader had been shot and killed by a 14 year-old fellow-student in the corridor of a junior high school in nearby St. Albans, West Virginia. The front-page story was accompanied by a photograph of the alleged killer in police custody, and both the story and the caption to the photograph identified him as Stewart Wayne Perrock. That afternoon, respondent Charleston Daily Mail, whose edition the previous day had reported the shooting without identifying Perrock, ran a follow-up article giving additional details about the shooting, including Perrock's name.

As is commonly the case with news stories, the contents of the articles in that Friday's editions of the Gazette and the Mail, including Perrock's name, were not exactly news to many of their readers.

For one thing, there were several eyewitnesses to the shooting, and the names of the dead boy and his alleged killer were common knowledge in the school and the community it served within hours after the incident. In addition to word-of-mouth, more modern competitors of the newspapers had also been at work. At least three local radio stations had broadcast the facts of the shooting, including Perrock's name, throughout the Charleston area by the time Friday's papers were published.

The Gazette, the Mail, and several editors and reporters of the two newspapers were subsequently indicted for violation of West Virginia Code 49-7-3, which prohibits the publication "in any newspaper" of the name of any juvenile in connection with any juvenile proceeding without an order of the court. If found guilty, respondents could each be jailed for as much as six months, and fined up to $100. W. Va. Code 49-7-20.

Respondents sought a writ of prohibition in the West Virginia Supreme Court of Appeals against further proceedings under that indictment, and the writ was granted. The Supreme Court of Appeals unanimously

held that,

> to the extent that W.Va. Code, 49-7-3 [1941] makes it a criminal offense for a newspaper to publish the name of a child in any proceeding under Chapter 49 of the W.Va. Code it is repugnant to the First Amendment of the Constitution of the United States as a prior restraint on the freedom of the press.

State ex rel. Daily Mail Publishing Co. v. Smith, 248 S.E.2d 269, 272 (W.Va. 1978). Certiorari was sought, and granted by this Court on November 13, 1978.

SUMMARY OF ARGUMENT

The question for decision is not whether the public's interest in knowing the name of a juvenile defendant outweighs the harm which may result from revealing it. There are many situations -- and this may well be one -- in which the prudent newspaper editor would conclude that it is better not to publish. But the First Amendment does not protect only the prudent. Rather, it guarantees that in all but the most compelling circumstances each editor has the right to decide whether particular information in his possession should be published, at least where the information

is lawfully acquired.

The information at issue here was neither obscene nor untruthful. It concerned a matter of public importance. It was not secret. It was acquired by lawful means. It is precisely the sort of information to which First Amendment values most clearly attach. (Point A). No compelling exigency justifies its suppression. (Point B). This Court's prior rulings require that the judgment below be affirmed. (Point C).

ARGUMENT

THE ABSOLUTE PROHIBITION OF PUBLICATION OF THE NAMES OF JUVENILE DEFENDANTS WITHOUT AN ORDER OF THE COURT ABRIDGES THE FREEDOM OF THE PRESS IN VIOLATION OF THE FIRST AMENDMENT.

The question raised by this case is an important one, but the principles at issue are by no means novel. The State of West Virginia has criminally prosecuted two Charleston newspapers for publishing the name of a juvenile defendant charged with shooting a fellow junior high school student to death. Thus, this case involves an attempt by a state to prohibit the

publication of particular content, on pain of criminal sanctions. This Court has dealt with such attempts before. What is novel in this case is that the matter the state is attempting to censor is not obscenity, cf. Miller v. California, 413 U.S. 15 (1973), or intentionally or recklessly false defamatory statements, cf. New York Times v. Sullivan, 376 U.S. 254 (1964), or direct incitements to violence, cf. Brandenburg v. Ohio, 395 U.S. 444 (1969), but true reports of events of public interest -- indeed, events that are the subject of judicial proceedings. The First Amendment does not permit such censorship.

A. The Challenged Statute Strikes Directly At The Core Of The First Amendment Guarantee Of Freedom Of The Press.

This Court needs no reminder of the importance of the constitutional guarantee of freedom of the press, for over the years this Court has been an eloquent defender of that freedom. It has repeatedly stressed the importance of free debate concerning ideas, opinions and values. See, e.g. Abrams v. United States, 250 U.S. 616,

630-31 (1919) (Holmes, J., dissenting); Whitney v. California, 274 U.S. 357, 375-78 (1927) (Brandeis, J., concurring). The Court has consistently emphasized our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." New York Times v. Sullivan, supra, at 270.

But the Court has also repeatedly indicated that the informing function of the press is extremely important as well. See, e.g., Grosjean v. American Press Co., 297 U.S. 233 at 256 (1936). It means nothing to circulate provocative or novel ideas in a factual vacuum. The humble, prosaic job of reporting the facts the public needs to form opinions and judge new ideas is the indispensable predicate of a politically and intellectually "robust" debate. As the Court recently observed,

> Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally.

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 492 (1975).

Precisely that interest is at stake here. As the Court said in Cox,

> "The commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions, . . . are without question events of legitimate concern to the public and consequently fall within the responsibility of the press to report the operations of government."

Ibid. In particular, the increasing incidence of juvenile crime and the increasing public discontent with established procedures for prosecuting juvenile offenders have made juvenile justice a controversial subject. The facts of an especially shocking juvenile crime are surely relevant to the debate over the appropriate legislative and judicial response to such crime.[1/]

1/ Indeed, in connection with its report on the crime at issue here, the Gazette specifically called attention to the fact that under West Virginia law the boy suspected of killing his schoolmate could only be charged with juvenile delinquency and, if convicted, could only be sentenced to detention until reaching the age of 18. A companion editorial also criticized the statute challenged in this case. The importance of free debate on the propriety of such statutes is obvious, but so is the importance of providing information so that the public may judge that debate.

Petitioners object that certain information is too trivial to be of value in determining public issues. Specifically, they contend that the public need not know the name of the accused killer to form a judgment about the most appropriate procedures for judging the accusation. But whether one would personally make the editorial judgment to publish a defendant's name is beside the point: the First Amendment reserves that judgment for the press.[2/] It is not for the government to decide which facts concerning events of public interest are too unimportant to be printed. As the Chief Justice has written for the

2/ Moreover, it is by no means clear that no purpose is served by publishing the name of the accused in a criminal proceeding. Publication may bring forward witnesses with information about the defendant that may be highly relevant to the particular case, or to a public debate about such cases generally. For example, a witness may have seen the accused at the time of the crime either near or far from the scene, or may be able to dispute newspaper accounts claiming that the defendant's character or history are in some way typical of those accused of crime.

Court:

> The choice of material to go into a newspaper, and the decisions made as to limitations on the size of the paper, and content, and treatment of public issues and public officials -- whether fair or unfair -- constitutes the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.

Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 258 (1974).

This Court has wisely refrained from attempting to assess for itself whether the name and picture of a juvenile defendant or the name of a rape victim was of too little importance to be worthy of First Amendment protection. Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977); Cox Broadcasting, supra. The Constitution does not protect the press only when it reports information that a court decides it is well for the public to know. Rather, it protects the autonomy of every newspaper to present to the public the information that its editors decide is worthy of

publication.[3]

This case does not involve a claim by the press that the right to speak implies a right of access to information the state prefers to keep secret. Cf. Gannett Co. v. DePasquale, 43 N.Y.2d 37, cert. granted, 435 U.S. 1006 (1978). Rather, it involves a state's attempt to prohibit the accurate publication of factual information directly relevant to important issues in the administration of criminal law which the press already has. The right to publish such information lies not at the periphery, but rather at the core, of First Amendment freedoms. This Court has never upheld an attempt by federal or state governments to punish the exercise of editorial discretion

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3/ For this reason, the fact that the statute permits judges to authorize publication of juvenile defendants' names cannot save it, as petitioners contend. Petitioners' Br. at 10, 16-17. Requirements that newspapers submit proposed copy to a judge for pre-publication approval are, if anything, even more alien to the First Amendment than subsequent punishments. See, e.g., Near v. Minnesota, 283 U.S. 697 (1931); New York Times v. United States, 403 U.S. 713 (1971). See generally Litwack, The Doctrine of Prior Restraint, 12 Harv. C.R.-C.L. L. Rev. 519 (1977).

to report truthfully information known to the press.

B. No Compelling State Interest Justifying The Challenged Statute Has Been Shown.

Even assuming that some urgent necessity can justify an infringement on interests that lie at the very heart of the First Amendment, no such compelling interest has been shown in this case.

The most significant state interest alleged in support of the challenged statute is an interest in preserving the confidentiality of juvenile court proceedings. The permissibility of such confidentiality, it is argued, has already been upheld by this Court. In re Winship, 397 U.S. 358, 366 (1970); In re Gault, 387 U.S. 1, 25 (1967). But the confidentiality of juvenile court proceedings and records is not at issue: respondents do not challenge the power of the state to maintain the confidentiality of such proceedings and records by denying the press and the public free access to them. Nor does this case involve the state's power to punish participants in such proceedings or someone who "secures

[such] information by illegal means. . . ." Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 837 (1978).

What respondents challenge is the state's power to punish a newspaper for divulging truthful information obtained through its own legitimate investigations, and not by surreptitious or illegal means, concerning an event of public interest which occurred in a public place, and not a closed courtroom. To justify such a prohibition, the state must show a compelling interest in preventing some harm that would flow not from the disclosure of confidential information, but from the printing in a newspaper of information already widely disseminated in the community.

Two such state interests are advanced. First, it is argued that the state has an interest in protecting the juvenile defendant's privacy interest in "anonymity with regard to his youthful transgressions." State ex rel. Daily Mail Publishing Co. v. Smith, supra, 248 S.E.2d at 271. For purposes of this case, we need not dispute that an individual's right to a measure of personal privacy, which itself has constitutional dimensions, see Tribe, American

Constitutional Law 648-650 (1978), may sometimes justify limitations on publication. As this Court has noted,

> powerful arguments can be made, and have been made, that however it may be ultimately defined, there is a zone within which the State may protect him from intrusion by the press, with all its attendant publicity.

Cox Broadcasting, supra, 420 U.S. at 487 (emphasis in original).

But however such a zone of privacy may be defined, it can surely have no relevance to a case such as this. While there may be "intimate facts about one's personal identity," Tribe, supra, at 649, over which the state may have a compelling interest in guaranteeing an individual's control, no such private facts were revealed here. To be sure, a criminal defendant, of whatever age, would prefer not to have others know that he stands accused. But we may not equate the embarrassing with the private. The act which the juvenile defendant here was accused of committing was terribly, tragically public.[4/] No con-

4/ Perhaps it can be argued that even such an incident, with the passage of time, becomes a purely private matter, and that the press may be prohibited from dredging (continued on next page)

stitutional right of privacy attaches to justify suppressing a full account of such an event, regardless of the age of the accused.

The second interest advanced by the state is an interest in the rehabilitation of juvenile offenders. The state argues that publication of the name of a juvenile defendant irrevocably taints the reputation at an early age, and so labels the defendant that future efforts to reform or rehabilitate - objects of particular concern with young offenders - will be seriously hampered. The rehabilitation of offenders - whether juvenile or adult - is surely an important governmental interest. But it is not compelling enough to justify infringing the First Amendment rights of the press and the public at large to discuss information in the public domain. The state's interest in furthering its correctional policies is not even a talismanic justification for all limitations on the First Amendment rights of prisoners themselves.

up, years later, the forgotten fact that a now-rehabilitated member of the community had once had a brush with the law. Cf. Melvin v. Reid, 112 Cal. App. 285, 297 P. 91 (1931). But the same argument cannot be made with respect to a c-ntemporaneous account of an individual's role in an event of public significance.

Procunier v. Martinez, 416 U.S. 396 (1974). The argument that it justifies abrogating the rights of those who have committed no crime is novel indeed.

Even assuming the state's professed goal is sufficiently weighty, however, the relation of the regulation to that interest is at best tangential. Two ways in which the state's policy of rehabilitating juvenile offenders may be undermined by publication of the names of juvenile defendants have been advanced. First, it is argued, the state's policy of encouraging the return of such offenders to normal society by preventing public dissemination of arrest and conviction records is undermined if the information contained in such records has been published. Second, it is argued that the psychological damage done to young defendants by the stigma resulting from publication of their names will prevent their rehabilitation.

Neither argument is persuasive. The publication in a local newspaper of a defendant's name is in no way comparable to the maintenance of an official arrest record, which can be, and regularly is,

widely disseminated to law enforcement agencies or employers. Public memory of such events and names quickly fades, and neither employers nor police agencies are likely to review all the back issues of every newspaper in the country for information about possible juvenile offenses in the routine way in which they might check for an arrest record. The suppression of such official records, as authorized by W.Va. Code 49-5-17, serves an important purpose in reintegrating former offenders into society and shielding them from prejudice. But it is not necessary to that purpose to try to suppress all memory of such incidents by infringing the First Amendment rights of the public and press.

Even more speculative is the argument that such publication inflicts irremediable psychological damage on the young defendant. It cannot be pleasant to read that one is accused of a terrible crime. But that experience is almost insignificant in comparison with the ordeal through which a juvenile defendant must pass in any event. The trauma suffered by a 14-year-old boy who has seen a schoolmate dying in a corridor from gunshots he himself is alleged to have inflicted; suffered the accusation of witnesses; been hunted down by the

police; been booked and confined as a criminal defendant; and read newspaper accounts of the crime with which he is charged, will not be significantly worsened if the boy also sees his name in the newspaper. Nor is it credible that such a defendant will be more scarred by the knowledge that utter strangers have read newspaper stories naming him than by the knowledge that everyone of importance to him has undoubtedly heard of the charges against him. The speculative and dubious nature of these assertions is underlined by the fact that neither the state nor amicus Juvenile Defender Program cites even a shred of evidence to support them.[5/] To argue that preventing the marginal ill effects of this kind of publicity is

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5/ The problem of "labeling" noted in the testimony cited by amicus clearly refers, when taken in context, to the official labeling imposed by a regular judgment of conviction. The argument that being labeled a "juvenile defendant" is less traumatizing than being labeled a "criminal" is dubious enough in any case; euphemisms are not so powerful. But the cited testimony itself demonstrates that the key elements in the process referred to are official labeling, imposition of sanctions, and internalization of official critical stances - all of which were abundantly present, regardless of newspaper publication, in the proceedings to which the juvenile defendant here was subjected.

essential to achieving the governmental purpose of rehabilitating youthful offenders is absurd.

In any event, West Virginia itself has not acted as if the prevention of such harms were of compelling importance. Like the court in Oklahoma Publishing, which sought to prevent publication of information it had itself already made part of the public record, West Virginia has not attempted to prohibit all public dissemination of the names of juvenile defendants, but only that which takes the form of publication in newspapers. The many witnesses to the crime are not forbidden from talking about it on a soapbox on the street. Even more remarkably, radio and television stations, the primary source of information for most citizens, are not forbidden to broadcast the same information respondents have been indicted for publishing. The state cannot sensibly argue that information it permits to be broadly disseminated to the public over the air waves is so potentially damaging that it must be suppressed when it appears in print.[6/]

6/ The state's attempt to regulate the print media, without similarly regulating the broadcast media, raises serious questions of equal protection as well.

It is not enough to justify infringement of a First Amendment right that the infringement is vaguely related to a state policy of rehabilitating juvenile offenders. Where the contribution of suppression of speech to such a policy is as speculative and marginal as it is here, a compelling state interest has not been shown.

C. Previous Decisions of This Court Require Affirmance of the Judgment Below.

This Court has dealt with state attempts to suppress publication of information about judicial proceedings in several recent cases. The results and the reasoning of those decisions support the judgment below.

In the first of this series of cases, Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975), the Court was faced with a private tort suit for invasion of privacy based on a Georgia statute making it a misdemeanor to broadcast the name of a rape victim. The Court held that the state may not, consistently with the First Amendment, "impose sanctions on the accurate publication of the name of a rape victim obtained from public records." 420 U.S. at 491.

Cox Broadcasting differs from this case in several respects, all of which would

seem to make it a stronger case than the present one for imposing some limitation on the prerogatives of the press. First, the facts revealed by the radio station in that case would generally be regarded as of a much more intimate nature than those involved here. The special horror of rape is its intrusion on the victim's personal privacy and autonomy, and public revelation compounds that intrusion. An accusation of crime is entirely different with regard both to the nature of the information disclosed and the concerned individual's relationship to it. The juvenile defendant here is accused of committing a highly public act, not of being the victim of an intimate one.

Second, in a private action for invasion of privacy, the personal interest of the plaintiff in "control[ling] what others are told about his or her life" is directly implicated. See Tribe, supra, at 649. Here, that interest is weak, and the state seeks not to compensate an individual for an invasion of privacy committed by another private party, but to bolster through criminal punishment its own less pressing interest in the rehabilitation of offenders. Thus, the state's interest here would seem to be weaker than

in Cox Broadcasting, while the First Amendment interests of the press and public in information concerning "[t]he commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions" would seem to be at least as great. 420 U.S. at 492.

Petitioners suggest only one distinction between this case and Cox Broadcasting. In that case, they argue, the information revealed was contained in a public record, and this fact accounts for the privilege of the press to report it; here, the information was derived not from open court records, but from reporters' independent investigations.

This distinction is spurious. Had the information at issue in Cox Broadcasting been obtained by illegal or surreptitious acquisition of confidential documents, the case might have been different. Cf. Landmark Communications, supra, 435 U.S. at 837. But while there may be a significant difference between a public record and a secret one where a state or individual interest in confidentiality is concerned, there can be no constitutional difference between what happens in a public courtroom and what happens on a public street. A state interest that may be sufficient to

justify attempts to keep information from the press is not automatically sufficient to justify limiting a reporter's right to publish what he sees with his own eyes, or is told by an eyewitness. Whatever may be the case with respect to the publication of confidential juvenile court records themselves, the fact that something a reporter sees or hears in a public place also happens to be contained in such a document does not justify a restraint on publication. 7/

The next case raising a similar issue was Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977). In that case, the Court relied on Cox Broadcasting and Nebraska Press Association v. Stuart, 427 U.S. 539 (1976), to hold that a state court could not constitutionally enjoin the press from publishing the name or photograph of a juvenile defendant where the court had permitted the press to attend

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7/ The difference between what occurs in a closed official proceeding and what happens on a public street is hardly "fortuitous." Br. of amicus Juvenile Defender Program at 6. It is the difference between what is public and what is private, between limiting press access to the councils of government and directly prohibiting private citizens from speaking what they know.

a court hearing involving that defendant. Petitioners try to distinguish that decision by again pointing out that the state court had attempted to suppress matter presented in open court. Again, however, the significance of that fact is merely that the information in question was not "acquired. . . unlawfully." 430 U.S. at 311. What matters, in other words, is not that the information was revealed in court, but that it was revealed in the open. While this Court may have left open the possibility that publication of illegally-acquired information in which the government has a legitimate secrecy interest might be punished, it has never suggested that what a reporter learns through legitimate investigation may be suppressed. 8/

8/ Petitioners and amicus Juvenile Defender Program attempt to distinguish Oklahoma Publishing by arguing that in this case the juvenile's name was not revealed by "law enforcement officials," Br. of amicus at 6, "or gotten by lawful means." Petitioner's Br. at 11. The former distinction, as argued in the text, is irrelevant, and in any event inaccurate - for the record shows that respondent Gazette obtained the juvenile's name from a police officer. App. at 25. The latter contention is puzzling as well as inaccurate. There is nothing unlawful

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The Court's decision just last Term in Landmark Communications, Inc. v. Virginia, supra, conclusively demonstrates that the freedom of the press to publish what it knows is not limited to what transpires in open court. In that case, as in this, the information in question had not been acquired in open court, and concerned a proceeding that state law required to be held on a confidential basis. Nevertheless, this Court held unanimously that the publication of the information could not be made a crime, despite important state interests in maintaining the confidentiality of the proceedings. 9/

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about newspaper reporters' discussing a crime with eyewitnesses and other reporters (respondent Mail, App. at 4), or police officers (respondent Gazette, App. at 25), and nothing in the record contradicts respondents' affidavits stating that such discussions were the source of respondents' information.

9/ Lacking support in the decisions of this Court, petitioners and amicus Juvenile Defender Program attempt to take comfort in an Act of Congress, contending that 18 U.S.C. §5038(d)(2) is a precedent for the West Virginia statute. Petitioner's Br. at 14, Br. of amicus at 10-11. Of course, enactment of an identical federal statute could not redeem an unconsti-

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Taken together Cox Broadcasting, Oklahoma Publishing, and Landmark Communications conclusively demonstrate that the press cannot be punished for publishing information it has acquired legally simply because the government might have an interest in keeping that information secret. There may be some circumstances under which the state will be found to have an interest sufficient to justify denying the press and public access to information in its possession. See, e.g.,

tutional state statute. But §5038(d)(2) is not analogous to the challenged statute in any event. Rather than specifically singling out the press for special criminal penalties, the federal statute creates no criminal liability, and apparently does not apply to the press at all. While the provision states in general terms that the name and picture of a juvenile "shall [not] be made public by any medium of public information in connection with a juvenile delinquency proceeding," the context - a series of limitations on the maintenance and use of juvenile court records by government personnel - makes clear that the prohibition is directed at courts, prosecutors, and police. The legislative history confirms that the clause is to be read as similar in nature to those that precede it; no indication is given of an unprecedented attempt to restrain the press. See S. Rept. No. 93-1011, 3 U.S. Code Cong. and Admin. News 5283, 5321-22 (July 16, 1974).

Houchins v. KQED, ___ U.S. ___, 57 L.Ed.2d 553 1978).[10/] But when the government does not control access to the information - whether because it has voluntarily made the information public, as in Cox Broadcasting or Oklahoma Publishing, or because private citizens came into its possession independently, as in Landmark Communications, or this case - the government has no power to suppress it. Any attempt to do so trenches directly on the core of the freedom of the press guaranteed by the First Amendment. It must be justified, if at all, only by a compelling state interest. As already demonstrated, no such interest is present in this case.

10/ The confidentiality of juvenile court proceedings approved by this Court in such cases as In re Winship, 397 U.S. 358, 366 (1970), on which petitioners rely, consists solely of such denial of access, as when juvenile proceedings are closed to the public, or juvenile court records are sealed.

CONCLUSION

The decision of the Supreme Court of Appeals of West Virginia should be affirmed.

Respectfully submitted,

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